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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,297	07/24/2003	Jurgen Kuhlmann	BKER-0042	3658
23377	7590	05/18/2005	EXAMINER	
WOODCOCK WASHBURN LLP ONE LIBERTY PLACE, 46TH FLOOR 1650 MARKET STREET PHILADELPHIA, PA 19103			KASTLER, SCOTT R	
			ART UNIT	PAPER NUMBER
			1742	

DATE MAILED: 05/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/626,297	KUHLMANN ET AL.
	<b>Examiner</b>	<b>Art Unit</b>
	Scott Kastler	1742

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 22 March 2005.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 9-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 9-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 July 2003 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of the instant disclosure in view of King. The admitted prior art of the instant disclosure, as expressed in paragraphs [0002-0005] for example, teaches a gas lance made of a truncated cone of fireproof material having entry and exit surfaces with slit shaped channels between the surfaces pointing essentially radially outward from the axis of the truncated cone, thereby showing all aspects of the above claims except to specifically teach that the entrance and exit slits of the channels are in offset relation to one another. King teaches, at col. 5, lines 10-38, and figure 3 for example, teaches that it was known in the art at the time the invention was made to arrange entry and exit openings of gas channels in a gas lance made of fireproof material in offset relation to one another in the manner recited in instant claims 1-3 in order to improve the performance of the gas injection lance. Because improved performance would also be desirable in the gas lance of the admitted prior art of the instant disclosure, motivation to arrange the gas channels of the admitted prior art of the instant disclosure so that the exit and entry openings are offset, as taught by King, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

Claims 9-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior art of the instant disclosure in view of King. As applied to claim 9 above, the admitted prior

art of the instant disclosure in view of King shows all aspects of the above claims except the specifically recited channel configurations or sizes, although the gas channel and lance of the combination of the admitted prior art of the instant disclosure in view of King operates in substantially the same manner with substantially the same effect. It has been well settled that where the applied prior art shows claimed components (the lance and gas channels) operating in substantially the same manner with substantially the same effect, motivation to alter the shape or configuration of the prior art components without altering the effect of the components, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made. See MPEP 2144.04 IV A and B. In the instant case, motivation to alter the shape or configuration of the gas channels or lance of the combination of the admitted prior art of the instant disclosure in view of King, to any equally useful shape or configuration, would have been a modification obvious to one of ordinary skill in the art at the time the invention was made.

#### *Response to Arguments*

Applicant's arguments, see pages 5-7, filed on 3/22/2005, with respect to the rejections over Bertollo in view of King have been fully considered and are persuasive. The rejections over this combination of the claims has been withdrawn.

Applicant's arguments filed on 3/22/2005 however, with respect to the rejection of the instant claims over the admitted prior art of the instant disclosure in view of King have been fully considered but they are not persuasive. Applicant's argument that the instant claims are now not obvious over the admitted prior art of the instant disclosure in view of King since the claims have been a mended so that they are not now in "Jepson type" format is not persuasive

because the admitted prior art teaching are also present in the specification as instantly filed, as described above.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott Kastler whose telephone number is (571) 272-1243. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy King can be reached on (571) 272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 1742

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott Kastler  
Primary Examiner  
Art Unit 1742

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